

EXHIBIT R



Manager-Level FLSA Training

November 2016



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Fair Labor Standards Act



FLSA Overview

- ❖ The FLSA is the federal law that governs wage and hour issues, including the requirements related to minimum wage and overtime compensation
- ❖ An employee is “exempt” from the minimum wage and overtime requirements or “non-exempt” from these requirements
- ❖ “Non-exempt” employees must receive overtime pay for all hours worked over 40 in a workweek
- ❖ Our nonexempt employees are “salaried” so they will get full pay even if they work less than 40 hours

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FLSA Changes



The Fair Labor Standards Act (FLSA) is a Federal law that governs minimum wage, overtime pay, child labor and recordkeeping obligations

- Under the FLSA, employees can be either exempt from overtime regulations, or non-exempt from overtime (and must record their time and receive time and a half for all hours worked over 40 in a workweek)

The DOL has amended its rules effective December 2016, to require that all employees who make less than \$47,476 per year (formerly \$23,660 per year) be automatically classified as non-exempt and therefore eligible for overtime pay for all hours worked over 40 in a workweek.

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The Fair Labor Standards Act is changing – the salary test is raising from \$23,000 per year to \$47,476, meaning that every employee below that pay level who meets the duties test must either have their pay increased above that threshold or receive time and a half overtime. Jacki Depew and I are currently wrapping up an analysis and in the next couple of weeks we can project that expense for Michael. Either way, we have to make these changes – we can communicate around them to get credit, but employees might be skeptical.

It is important to know that we will likely see some salary expense naturally as a result of this legislation, especially if a number of roles will be newly eligible for overtime, so there are some important communication and training initiatives coming out of this.



FLSA Overview

FLSA Legal Standard

If The Advisory Board Company “suffers or permits” an employee to work, we must pay them for all hours that we “knew or should have known” the employee worked.

We must pay them overtime:

- ✓ **Even if we didn’t request or require it;**
- ✓ **Even if we didn’t approve it;**
- ✓ **Even if we didn’t necessarily “know” it**

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We have to pay even if the employee doesn't ask for overtime – if we know or have reason to know they worked it.

This includes work done in the office – before hours, during lunch, after hours.

It also includes work done from home – if take laptop home and work, or if they have ABC email on their cell phones and are checking or responding to emails or calls.

We have to be careful if we are expecting them to do more work than can reasonably be accomplished within a 40 hour workweek. Example – end of month or end of quarter or while on a development or focus plan.



Overtime Issues



Only hours worked count toward 40 hour workweek for purposes of determining if overtime is owed.

- ❖ Holidays, PTO, Healthy Life and Community Impact hours do NOT count as hours worked for purposes of calculating overtime.
- ❖ Employees must enter their PTO hours and should be encouraged to enter Healthy Life and Community Impact hours in Workday.

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Example 1:

Employee requests 4 hours of PTO for Friday afternoon to catch a train. If they work an extra hour each day Monday through Thursday, 44 hours will be entered in Workday, but only 40 hours are "work time" and therefore the employee is not due any overtime pay.

Example 2:

Employee works 8:30 to 11:00, then takes 1 hour for healthy life from 11-12, then takes an hour for lunch from 12-1, then works 1 to 6:30. Ten hours total, but only 8 hours of work – if they work regular schedule the rest of the week, they are not due any overtime pay.

Alternatively, if employee takes that one hour of healthy life and leaves at 5:30, they will still be paid for 40 hours for the week, even though they only worked 39 hours.

So instead of telling employees that they have an option of entering their HL/Community Impact hours, we should tell them that they should always enter it – we track it as a company and it will not impact their base pay or their eligibility for overtime pay.

Overtime



Overtime “Policy”

- It is permissible to have a policy that employees may not work overtime without prior approval
- However, if someone works overtime without prior approval, it still must be recorded in Workday and paid
- Your response to overtime worked without approval, will depend on the reason:
 - ❖ Emergency Request – no penalty, record time, flex later in the week if possible.
 - ❖ Employees feels they need to work it to get their work done – address it constructively to figure out a solution. No penalty, record time, flex later in the week if possible.
 - ❖ Repeatedly working overtime without approval, without adequate explanation – discipline may be appropriate. Must still record time and be paid.

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While discipline is appropriate when there is a pattern of abuse, I want to be careful that we aren't "threatening" employees with discipline whenever someone works overtime without approval – that encourages people to hide it and can lead to morale issues.

Discipline is in your tool box, just proceed with caution.



Overtime

Lunch Breaks

- ❖ The FLSA does not require lunch breaks.
- ❖ For lunch break to be unpaid, the employee must be relieved of all duties for at least 30 minutes.

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Example:

An employee takes 20 minutes to run to the Café or around the corner to grab lunch and then comes back and eats at their desk while checking email or updating Salesforce - it's not an unpaid lunch break and the entire time must be paid (including the time running down to the Café.)

If the employee returns to his/her desk, but is on social media or shopping online or anything else for their own purpose for at least 30 minutes, it would count as an unpaid lunch. If they start working again after 45 minutes, they need to record their lunch as 45 minutes, not an hour. And if they don't come in 15 minutes late or leave 15 minutes early that day or within that same workweek, they are going to be owed 15 minutes of overtime pay.

Overtime



Rest Breaks

- ❖ Any break of less than 20 minutes is a paid break – no matter how many breaks they take during the day. Not “cumulative”
- ❖ If an employee is taking numerous breaks throughout the day, you should address it as a performance issue – informal counseling to begin with and then proceed to more formal warnings (options: documented verbal, written, final written)
 - ✓ Be consistent
 - ✓ Work with your manager
 - ✓ Work with CM for any formal warnings
 - ✓ We still need to pay them for their time, including overtime if applicable

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Examples:

An employee comes in at 8:30 and logs into their computer and then takes 10, 15, or 20 minutes to go down to the Café , then takes 20 minutes at 3:00 to go to Starbucks for a total of 35 or 40 minutes – that does NOT count as an unpaid meal break. It counts as work time.

Similarly, if an employee takes 4 15-minutes breaks throughout the day to chit-chat with coworkers, check social media, etc. – can you count that as their unpaid lunch break or require them to make it up at the end of the day by staying until 6:30? No. If they do stay until 6:30 in that scenario, they will have worked an hour of overtime and will be owed overtime pay.

Overtime



"Flex" Schedules

- ❖ Good opportunity to avoid need for overtime by allowing an employee to come in late or leave early one day to offset need to work more than 8 hours on another day
- ❖ *Open communication is key*
- ❖ Flexing must be within the same workweek (not enough to be in the same pay period)

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Open communication is key.

Must be in same workweek – overtime obligations are based on a 40 hour workweek and if an employee works 50 hours one week but only 30 hours the following week in the same pay period, they will still be entitled to overtime for the 50 hour workweek.

Overtime



Time Entries

- ❖ Check your employees' timesheets each week
- ❖ If you see an employee coming in early, working through lunch, staying late – make sure it is reflected accurately in their timesheet. If it doesn't look right, ask them
- ❖ Employees must enter the exact time they start and stop work, not just total hours for the day. If it's consistently in at 8:30 out at noon, in at 1:00 and out at 5:30, it's probably not right. Can't be a default

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We have a legal obligation to keep accurate time records for non-exempt employees – even if they are salaried, and in DC that specifically requires time in and time out, not just total time.





Steps to Ensure Legal Compliance

Today's training is one step.

- ❖ If you feel that your team needs help meeting their goals, or you need help – redistribution, additional resources, overtime resources – you should feel empowered to raise it through your management chain
- ❖ Employees may be subject to discipline only when a pattern of abuse has been established
- ❖ No one at The Advisory Board Company should be a roadblock to treating our employees fairly, paying them appropriately, and complying with our legal obligations. If you think someone is being a roadblock, you need to escalate it
- ❖ As a manager, you can't turn a blind eye

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Steps to Ensure Legal Compliance

Tread Carefully:

 **Things not to say:**

- X "We don't have budget for overtime." (Instead: "We don't permit employees to work overtime without prior approval, except in emergency situations.")
- X "If you can't finish your work in a 40 hour workweek, you must be doing something wrong."
- X "If you take a lot of breaks or are unproductive during the day, you should make up the time before or after hours."

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Legal Compliance

Next step: training for employees

- ❖ Overtime is available when needed (when approved in advance and in emergency situations)
- ❖ Employees are not required, expected or allowed to work overtime without reporting it
- ❖ If they are having difficulty with their workload, they will be encouraged to come to you or CM
- ❖ If they are being told or encouraged or permitted by anyone in management to work off the clock, they will be told to report it to CM or to the company hotline
- ❖ If they exhibit a pattern of abuse, they will be subject to discipline

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Legal Compliance



Key Legal Takeaways:

- We have to pay employees for all overtime worked, even if not approved in advance.
- We have to pay overtime even if not submitted or requested by the employee if we “knew or should have known” that the employee worked overtime.

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Questions?

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